



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

JULY 9, 2002

PRESENT: Acevedo, Engles, Escobar, Lyle, Mueller, Weston

ABSENT: Benich

LATE: None

STAFF: Planning Manager (PM) Rowe, Senior Engineer (SE) Creer and
Administrative Secretary Smith

Chair Acevedo called the meeting to order at 7:02 p.m.

DECLARATION OF POSTING OF AGENDA

Administrative Secretary Smith certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Acevedo opened the public hearing.

With no one present wishing to speak, the public hearing was closed.

Commissioner Weston stepped down from the dais at this time due to a possible conflict of interest, as he is the architect for the next project agenda item.

CONSENT CALENDAR:

- 1) EOT-02-04/
UP-01-02:
KEYSTONE-
MARTIN:** A request for an extension of time on a conditional use permit for a mixed use located at 20 Keystone Ave in the CC-R, Central Commercial Residential zoning district.
- COMMISSIONERS MUELLER/ENGLES MOTIONED FOR THE APPROVAL OF RESOLUTION NO. 02-56 ALLOWING A ONE-YEAR EXTENSION OF THE CONDITIONAL USE PERMIT APPLICATION, UP-01-02. THE MOTION CARRIED ON A VOTE OF 5-0-2 AS FOLLOWS: AYES: ACEVEDO, ENGLES, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: BENICH, WESTON.**

Commissioner Weston resumed his seat at the dias.

Chair Acevedo advised that he had been requested by Scott Schilling, project applicant, that item #2 be moved and heard later on the agenda because he wanted to be present, but would be arriving late. It was the consensus of the Commission to delay the hearing of Item #2 until the arrival of Mr. Schilling.

Agenda item #3 was heard at this time.

NEW BUSINESS:

- 3) DAA-01-07:
COCHRANE-
MISSION
VIEW** A request to amend the development agreement for Phases V & VI of the Mission Ranch project to include the 4 building allocations received as part of the City's 2001 Residential Development Control System. The Mission Ranch project is located on the on the south east corner of the intersection of Cochrane Rd. and Mission View Dr.

PM Rowe presented the staff report, indicating that on June 11, 2002 the Commission reviewed and approved a 28-lot tentative map for phases V and VI. As a condition of the approval, the project development agreement needs to be amended to address the 4 new building allotments. Other significant recommended changes to the agreement are: 1) Addition of subsection (n) requiring Peet Road frontage improvements; 2) Addition of subsection (r) requiring the annual reporting of the unit sale prices; 3) Modification of (l)i requiring an additional BMR in future phase VII ; and 4) Date changes within Exhibit B. PM Rowe requested Commission adoption of Resolution No. 02-58, with recommendation to City Council for approval.

Chair Acevedo opened the public hearing.

There being no one present wishing to speak to the matter, Chair Acevedo closed the public hearing.

COMMISSIONERS LYLE/MUELLER MOTIONED TO APPROVE RESOLUTION NO. 02-58. THE MOTION PASSED BY A VOTE OF 6-0-1 AS FOLLOWS: AYES: ACEVEDO, ENGLES, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: BENICH.

- 4) DAA-00-12:
E. DUNNE-
GREWAL** A request to amend the development agreement for a four-lot subdivision of a 1.6 acre parcel located on the north east corner of the intersection of Hill Rd and E. Dunne Ave. The amendment request would extend the four building allocations for nine months to March 30, 2003.

PM Rowe presented the staff report, noting that this development agreement amendment will incorporate the nine-month extension of time to record the final map, pull building permits and commence construction for the 4 FY 2001-02 building allotments. The extension request (ELBA) was approved by the Commission and Council on June 11, 2002 and June 19, 2002, respectively. PM Rowe provided staff's request for Commission adoption of Resolution No. 02-59, with recommendation to forward to City Council for approval. He informed the Commission that if the applicant fails to submit a complete final map application and provide all information requested by the Architectural Review Board by July 12, 2002, their action on this item tonight would become null and void. Staff would then

return this item back before the Commission with a recommendation to reassign the unused building allocations.

Chair Acevedo opened the public hearing.

There being no further comments, the public hearing was closed.

Commissioner Lyle pointed out that the dates under Exhibit A, Section IV, Building Permit Submittal, should be changed from 03-30-03 to 11-30-02. He also recommended splitting out the dates under Section V, Building Permits, of Exhibit A as follows: 1) Separately list "Obtaining Building Permits" schedule and change dates from 03-30-03 to 02-15-03; and 2) Separately list the "Commence Construction" schedule, with the 03-30-03 dates unchanged.

COMMISSIONERS LYLE/MUELLER MOTIONED FOR THE APPROVAL OF RESOLUTION NO. 02-59, WITH THE ABOVE NOTED MODIFICATIONS TO EXHIBIT A, SECTIONS IV AND V. THE MOTION CARRIED ON A 6-0-1 AS FOLLOWS: AYES: ACEVEDO, ENGLER, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: BENICH.

**5) ZA-01-23:
COCHRANE-
IN-N-OUT
BURGER**

A request for approval to amend the precise development plan for the planned unit development located at the northwest quadrant of Cochrane Rd. and Hwy 101 to allow for an approximate 3,250 sf drive-thru restaurant. The subject site was originally approved for a 6,300 sf sit-down restaurant.

PM Rowe presented the staff report, concluding with staff's recommendation that the Commission deny the applicant's request to change the precise development plan and the permitted uses to allow them to be located on the site for the following reasons: One, the request is inconsistent with the original intent of the Planned Unit District (PUD); and two, it is inconsistent with the community's overall objectives for the types of uses for this gateway area site. PM Rowe stated staff is also concerned with the site plan as proposed and its impacts primarily in terms of onsite traffic circulation. He added that the applicant has indicated some "keep clear" and a few other indicators to try to direct traffic in a way that will minimize impacts, but the problem with this is that there still will be a tendency for customers to exit the site from the ingress-only driveway, which will create conflicting movements for vehicles entering that driveway. He noted that he felt the reverse in the flipping of the plan would probably be a better approach.

PM Rowe then provided the Commission with the following alternatives to staff's recommended action: 1) Alternative #1 - Approval of the zoning amendment to allow a drive-thru, fast food restaurant in the PUD, but denial of the amendment to the precise development plan as proposed with the requirement that the applicant either a) relocate the drive-thru, fast food use to the corner parcel; or b) redesign the precise development plan for the currently proposed site to eliminate some of the onsite planning and circulation issues; and 2) Alternative #2 - Approval of the zoning amendment request to allow drive-thru, fast food restaurant use in the PUD, and approve the amendment to the precise development plan, where extensive conditions would be placed on the approval.

PM Rowe advised the Commission that the traffic engineer with Fehr & Peers Associates, Jason Pack, was present to address questions regarding the onsite traffic circulation, as well

as the project's impact on the offsite. At this time, PM Rowe field questions from the Commissioners.

Commissioner Engles inquired if both Alternative #1 and Alternative #2 recommendations anticipate overflow parking on the hotels' parking lots? PM Rowe replied "yes", and added that staff does not feel it's a problem because the p.m. peak for the dinner hour for the restaurant is an off-peak time for the hotels, whose peak times tend to be from 10 p.m. to 6 a.m.

Commissioner Escobar requested clarification with regard to the kind of establishment conception that meets the concept of a gateway entrance so that he would know whether or not this project fit conceptually within the general parameters. PM Rowe responded that the concern is with the first impression statement given of Morgan Hill for people entering the community gateway from the freeway and the nature of the use along with the site. He added that staff has a Scenic Gateway Plan that is underway, which the Architectural Review Board is working on, and it will be coming to the Planning Commission, at which time there will be a better definition and some standards of what the City gateway expectations are.

Commissioner Escobar then asked what type of restaurant or eating establishment would be more suitable for that kind of a site? PM Rowe stated that there is more flexibility in terms of the way the floor plan can be configured for a sit-down restaurant. Because In-N-Out Burgers is configured partly to handle high volume, there is a proficient layout that they have perfected over time to do that, and that will dictate how the building is arranged. He continued by indicating that another issue is that fast food restaurants are inherently a higher traffic generator and has greater impacts on onsite circulation because of the drive-up window. He also pointed out that with a sit-down restaurant the turnover in parking is longer and the traffic impacts are not as great, both onsite and to the surrounding street system, compared to a fast-food restaurant. PM Rowe stated that as far as the project design, the applicant has worked hard with staff to try to address the architectural requirements of the PUD.

Commissioner Escobar also expressed concern with conditioning the project to a point because of an image perspective. He commented that he was not diminishing the value of having an image perspective, but that the City has another freeway entrance where all four corners have fast food facilities, and he didn't know if this is somehow going to change the impression of those who are passing through Dunne Avenue. PM Rowe stated that it may not, but one of the reasons why the City Council initiated a series of amendments and established the PUD districts at the freeway interchanges on Dunne and Condit and Cochrane, was to establish limits because there were too many hotels going in along Condit Road. Commissioner Escobar indicated that he understood, but when he look at other interchanges throughout the State, and particular here in Santa Clara Valley, he find very few upscale restaurants that are located just off the freeway. He continued by saying he's concerned because if the site is not going to be used by a sit-down facility that we are looking for, then we might end up settling for something less, and he thinks the Commission has an opportunity to condition things the way we want to for a viable applicant.

In response to Commissioner Engles' question, PM Rowe stated that In-N-Out Burgers is also in the process of purchasing the adjacent parcel and submitting an application administratively that would adjust the property line between the two properties and place more of this property over onto the side where the restaurant would be located.

Commissioner Engles asked what staff's recommendation would be if they purchased both parcels? PM Rowe responded that staff's recommendation would be not to approve the amendment to the PUD, but that Alternative #1 would place the least amount of impact on the adjacent land use and provide the most efficient onsite circulation.

Chair Acevedo opened the public hearing.

Ron Volle, Northern California Real Estate Manager for In-N-Out Burgers, presented that Commission with a brief history of the restaurant, as well as its mission statement, operations and company events. He then provided background information on the project. He stated that staff completed a traffic study based on their Mountain View and Gilroy restaurants, which are two of the highest restaurant volumes at the top of their chain, and explained why he did not feel they were good comparisons. He commented that the good news is that the traffic study gives you a super worst case scenario of what might potentially occur there; however, the study still concluded that their project use would not have a significant impact.

For clarification purposes of Commissioner Engles earlier question, Mr. Volle stated that they are in contract to purchase both properties, but have not closed escrow yet. He continued by stating that Alternative #1 puts the focal point of the building at the gateway area, and the only way they can do that is to have the backdoor where it comes around facing the freeway and close to all the traffic signalized intersections at the freeway and Cochrane. He noted that staff is suggesting that they put their drive-thru lane right along side Cochrane in front and visible to everyone; however, they have always found that it is best to minimize the view of the drive-thru by putting it along side the building towards the back, and our current site plan accomplishes that quite well. Mr. Volle then provided comments regarding the drive-thru stacking issue, stating that their site plan reflects a 35 ft. easement driveway between Chevron and In-N-Out Burgers to stack the one or two extra cars that were noted at their peak period. Mr. Volle shared an artist rendering of their proposed architectural design of the project with the Commission. He stated that their Sunnyvale restaurant is at a gateway property and The City of Sunnyvale is very happy with them. He added that they are not going to stand on their prototype building, that they understand the intersection and the desire of the City, and they are willing to work with the City on that.

Lastly, Mr. Volle stated that they understand that the City wants a sit-down restaurant in this project and that they want the same. He said the best way to protect that is to keep their site plan where it is and support Alternative #2, which will allow the larger parcel to be a sit-down restaurant. He shared that their goal is to open up their In-N-Out Burgers restaurant, fill in all the parking spaces on their site, as well as on the restaurant site, use that for the first 6 months or however long, and then start to look for a quality sit-down restaurant that can join their project at the site. In conclusion, Mr. Volle advised that Raymund Villanueva, Director of Development with In-N-Out Burgers, was present and they both would be happy to answer any questions of the Commission.

Commissioner Engles queried Mr. Volle at this time. He asked if there is enough parking to accommodate their additional use of another restaurant on the site? Mr. Volle responded there is a total of 107 parking spaces, 33 of which are required for their restaurant, leaving an adequate number for the other restaurant. Mr. Volle stated they have talked to Tharaldson Development and they are willing to accommodate a few parking spaces, if necessary, when they open another restaurant. Commissioner Engles asked if he understood Mr. Volle correctly in saying that they can't go next to the freeway? Mr. Volle responded that they

think it minimizes the chance to bring another restaurant there because In-N-Out would then be taking the larger parcel, and that it is very difficult to find a restaurant to fit on 43,000 sq. ft., as they typically want 50,000 sq. ft. He voiced that they are really not happy with having the back of their building to the freeway and the intersection.

Commissioner Weston commented that during the lunch time period that he definitely thinks that staff's comments about the possible jamming up of where it says "keep clear" and In-N-Out Burgers' rebuttal to that of the cross-hatched area is still kind of true, because he didn't think many people coming to the restaurant would be coming from the north or down from San Jose. Mr. Volle responded that they have found that the majority of their traffic does use the freeway and comes in on a right-turn lane from Cochrane. He pointed out that typically the drive-thru lane is 16 cars or less. He said it was noted on an occasion or two at minimal times that the drive-thru had 17 or 18 cars. However, if that were to happen, they are very good about having their associates out there to ask people to make a circle around during the one or two times that might happen.

Commissioner Mueller commented that Mr. Volle's assumption that the majority of their patrons come off the freeway is contradictory to the evidence the Commission has been provided. He pointed out that the traffic study actually indicates 35% not 70% of their patrons would have that right turn-in, right turn-out availability. Commissioner Mueller then questioned Mr. Volle regarding how much of the business of the restaurant will be new to Morgan Hill that does not take from another fast food restaurant in Morgan Hill? (50% estimated); proposed restaurant volumes in three years? (60% of Gilroy); and how marketing needs are determined? (50,000 people in a 3 to 5 mile area).

Commissioner Mueller further queried Mr. Volle as to why he thinks they would be more successful in attracting the use of the other site than the current developer, when the very person who approached In-N-Out Burgers, in the agreement with the City, readily said that he had no problem saying "no fast food". Mr. Volle replied that once In-N-Out Burgers is located there and people see how successful they are, those other restaurants will be inclined to go there. Commissioner then asked Mr. Volle if they have partnered with anybody before? Mr. Volle replied that he knows the real estate representatives of almost all the other chains and they call him wanting to know what he's looking at and where he's going. He indicated the interested chains run the gamut from Chili's, Jamba Juice, Rubio's, Starbucks, Mimi's Café and Krispy Cream Donuts. Commissioner Mueller shared that he had heard in the industry that a lot of people have expressed an interest in locating there, but they can't work a deal with the current owner. Mr. Volle stated the assessment district bonds setup to fund the infrastructure and the development fees are very expensive.

Jason Pack, traffic consultant with Fehr and Peers Associates, addressed the following questions and comments he received from the Commission prior to the meeting:

1) Intersection of Cochrane Plaza and Road "A" that was not included in the traffic study. Commissioner Lyle stated he was concerned about the queuing in the left turn, because it is very busy coming down Cochrane Plaza, and with this additional traffic going on there, it may be higher than what was indicated. Mr. Pack stated that he did some level of service and queuing analysis at that intersection and under near term conditions came up with a queue for that left turn being approximately six vehicles deep. However, he said he did run the analysis looking at increased volumes under General Plan buildout conditions, and the intersection did grade at an unacceptable level; thus Road "A" and Madrone Parkway

becomes unacceptable at General Plan buildout, not buildout of the site, in which case you probably need signalization and some kind of coordination between the Cochrane Road intersection, as well as that intersection. Commissioner Lyle then asked if that becomes unacceptable, could Cochrane Road (the right- in, right-out driveway) be opened up? SE Creer responded that staff would not support that because of the nearness to the intersection. Commissioner Lyle said that would also be his concern. Mr. Pack added that the analysis did not include any development on the west side of the Madrone Parkway intersection where there is a vacant parcel. He said it looks like there is a driveway already cut in there, so if anything did go in there, it would probably further degrade the intersection operation.

2) The pass-by trips. Commissioner Lyle restated his concern that if you were on Cochrane Road eastbound and going to go passed the restaurant going to the freeway, you would pass by and have a straight through movement through the Cochrane/Madrone or the Cochrane Plaza intersection. However, if you want to go to the restaurant, you would replace that straight through movement with a left turn onto Madrone and a right turn into Road "A", and when you come out you would make a left turn onto Road "A" and another left turn onto Cochrane Plaza. He said he felt that trips should not be subtracted, but be added because you actually end up with more movement. Mr. Pack explained that those pass-by trips are not new to these study intersections and that they were taken into account. He referred the Commission to Figure 8, intersection 5, under the project trip assignment of the report where the new trips are indicated, and pointed out that the pass-by trips are shown in brackets. Mr. Pack noted that 16 vehicles have been taken out of the intersection on the through movement and that they were added back on the left-turn movement, making those new trips or additional trips total 30. Mr. Pack clarified that since they were only looking at the p.m. peak hour trips, he showed the pass-by trips in brackets.

3) Executive Summary of the traffic report. Commissioner Lyle commented that the statement made that the Cochrane/Madrone intersection will still be at "D" when this project comes in, in his view is highly speculative, because it assumes 50% of the traffic that is currently there is diverted back to Hwy 101. He added that if you diverted more traffic than the 50%, then you suddenly might be at "D+", and this would be degraded to a "D". Mr. Pack commented that it is speculative whether it will be at "D" or "D+" once the freeway opens, and that 50% is the number that City staff, Higgins Associates & CCS consultants were in agreement with. He pointed out that CCS used the traffic model under existing conditions with the freeway widened and without the freeway widened to try and get an idea of how the traffic forecasting model is loading the roadway network.

4) Commissioner Lyle's next concern was with respect to when the background roadway improvements on page 13 of the traffic report would be done in the City, and whether or not there are commitments for the first two (third east-bound lane and west bound left-turn lane). SE Creer replied in the affirmative, and stated that staff had a preconstruction meeting one week ago, and that work should be starting there in about a month or so on both roadway improvements.

5) Commissioner Mueller stated that there has never been a condition where there would be almost two full levels from where the General Plan assumes we will be with no fix. The intersection at Cochrane and Monterey is indicated to be a level "F"; Commissioners felt the level should be two (2) below that or "D", making the intersection less than desirable for the presented proposal. Commissioner Mueller asked Mr. Pack why his study has such a different result than what anybody else has come up with? Mr. Pack replied that a lot of that

stems from the fact that there is a recently approved project (a gas station and some retail going in that area) that will increase the usage of the fourth leg. He stated that primarily the study works in three phases. You only have a west bound approach, a south bound approach and a north bound approach, because the east bound approach was nonexistent, and every time he looked at it, they took all of those volumes into consideration. Mr. Pack continued by explaining that this is the first study where he has included traffic volumes that are associated with that approved project, and when he added that, it took premium time that could be allocated to those other phases and allocated it for that project. Now with the General Plan buildout and the manipulation of the numbers that he has used, that intersection is exploding. Commissioner Mueller asked if Mr. Pack is assuming that has a bigger impact than a 50% reduction in the traffic through there due to the freeway? Mr. Pack replied that the General Plan buildout has more buildout and more regional growth associated with it. He said that his understanding from talking with CCS, who developed the model, is that the freeway would need to be 10 lanes wide to handle all of the regional traffic through Morgan Hill 30 years from now. Therefore, as the region expands you are still going to experience more people getting off and going up Monterey Road as a bypass to Hwy 101.

Commissioner Mueller indicated that from what he is hearing, his understanding of what the traffic models assume is that Hwy 101 would be 8 lanes, with a right-of-way held for 10 lanes, and the General Plan requirements should be met if there were only 8 lanes. PM Rowe pointed out that with Hwy 101 at 8 lanes, they would have to look at adding more travel lanes on the north arterials in order to handle the increased spillover that would return to the City's surface streets. Commissioner Mueller stated that his concern is beyond the scope of this application. He commented that based on what this traffic study is telling us, the City has an intersection that is headed for major problems with no way to get around it if we don't do anything now, as we are just two years from when the General Plan traffic study was done. SE Creer stated that the Catholic High School looked at some options and he believes there is discussion about adding a third south bound, left-turn receiving lane that takes it over and drops it at Butterfield Blvd. So the design has been looked at.

Jane Bierstedt, a Principal with Fehr & Peers, addressed the Commission, stating that the one thing that has to be taken into consideration is that these projections and how far out they are into the future, including discretionary trips, are really worst case projections. She concurred with Commissioner Mueller's comment that it is probably equally likely that the projections will understate the demand, as these are projections based on a lot of assumptions, and there are so many assumptions that could change. Pm Rowe pointed out that at least two more General Plan amendment cycles will occur before the buildout conditions of this current plan is reached. He added that there are also other modes of transportation that are being addressed now to keep people off the freeway.

There being no further comments, Chair Acevedo closed the public hearing.

Chair Acevedo polled the Commissioners to see if anyone supported staff's recommendation to deny the zoning amendment request to allow the drive-thru, fast food restaurant use in the PUD, and deny amendment to the precise development plan.

Commissioner Weston stated he had not heard any compelling arguments that they should approve this project. Commissioner Engles said he would be inclined to approve the project, subject to conditions. Commissioner Mueller stated that part of what they were looking for was to put sit-down restaurants in Morgan Hill and we are not getting them. He continued

by saying that he would need to have more work done on the design of the project and a lot of the traffic issues addressed before he could vote and agree to change the underlying PUD. He ultimately stated that he would be willing to look at it again if further work will be put into the project before the Commission make a final decision.

Commissioner Engles said that he understood what Commissioner Mueller was saying and that he thought there was some validity, but he thinks there are some other issues to be considered. One, that this property has been in the market for the last three years and there has been no takers. He commented that often times in our General Plans it reflects what we would like to have as a community, but it does not necessarily parallel the market nor does it parallel reality. So, the question is do we let the site sit fallow for an indefinite period of time, knowing we are coming off one of the hottest markets in the history of California, or do we ignore that. The other item that is significant to a lot of people in the community from an economic standpoint, is that it is very difficult to get decisionmakers from around the Bay Area who are headed south on Hwy 101 for Carmel or points further south, to pull off the freeway in Morgan Hill. Therefore, they never get an opportunity to experience what Morgan Hill is about. An In-N-Out Burgers is a definite reason for people to pull off the freeway, and maybe In-N-Out Burgers could be asked to provide photographs of our downtown community. Commissioner Engles concluded by stating that one part of him says yes we all would like to have sit-down restaurants, but the other side is that we have to look at reality and rather than have no restaurants at all, it looks like we could be headed for a sit-down restaurant in conjunction with another restaurant, which I think would finish off that corner nicely.

Chair Acevedo stated that he agreed with Commissioner Engles comments 100%. He said he eats at all the burger establishments and he would prefer, given the option, to going to In-N-Out Burgers. He added that from what he has heard, they sound like they are very good corporate citizens and they work with the non-profits, which is really appealing to him. He advised that he would strongly like to see In-N-Out Burgers locate somewhere in Morgan Hill, and he thinks what they have presented so far looks nice. Chair Acevedo stated that provided they are conditioned with the concerns the Commission has noted, he thinks it would be fine at that location. He continued by saying they sound very flexible, as far as what kind of architecture they would be willing to do, and that they just want to get approval to locate there, and then they will work with us.

Commissioner Escobar stated that at this point he would be unwilling to support staff's initial recommendation for denial. He said, in concert with what Commissioners Engles and Acevedo indicated, he thinks the Commission has an opportunity to bring somebody into Morgan Hill that has more than just image to offer. He indicated that he feels traffic is a serious issue and should be mitigated and dealt with appropriately. Commissioner Escobar added that he thinks the architectural issues are things that can also be dealt with appropriately, and feels there is a willingness on In-N-Out Burgers' side to work with us in that vein. He commented that at this time "a bird in the bush" is better, because we have someone who obviously draws patrons to their restaurants, and drawing people to the area to spend money to create an opportunity for jobs for young people, is sorely needed in this community. Therefore, he thinks it is the Commission's responsibility to try and find a way to help In-N-Out Burgers find a suitable place, starting with this site.

Commissioner Lyle agreed with Commissioner Mueller's comments. He said that ultimately he would probably support the request too, but he would rather get these problems worked

PLANNING COMMISSION MINUTES

JULY 9, 2002

PAGE -10-

out, rather than lay a lot of conditions on them and hope that the Commission was clever enough in the way the conditions were set that things get worked out properly. He stated that he thinks that staff has laid down a number of good conditions, and that he was very concerned about the drive-thru and the traffic circulation as mentioned by Commissioner Mueller. Secondly, Commissioner Lyle commented that the parking is marginal and again, with a little more talk, probably he could be convinced that it is okay. He added that they have gone a long way with the architectural design and perhaps a little more will make that okay, but I would like to see it up front for once.

Commissioner Mueller requested to comment on some of Commissioner Escobar's input, stating that the Commission needs to be looking at what they want where. He pointed out that the City had an opportunity about six or seven years ago to give up 50% of our Business Park to other uses because the Park had been there 20 years and hadn't done anything. He stated that granted we are in a downturn right now, but 50% of that Business Park is now built out, so if you don't hold you feet down to what you want, you'll give it up to a lesser use and the real use you would like goes away.

Upon the request of Chair Acevedo, PM Rowe advised the Commission of the following steps that could be taken if there is a potential 3-3 tie vote: 1) Technically it is considered non-action on the Commission's part, and to the Council, it's considered a denial. Staff would then, as part of their report to the Council indicate the positions of the three members that are in favor and the three that are in opposition; and 2) The other option would be to continue the request to a meeting where all members are present to resolve the tie vote.

Commissioner Engles indicated that he felt that Alternative #1 and #2 both rely on the overflow parking into the hotel parking lots, and stated that probably is not realistic if the owner has a desire to sell these hotels and is waiting to get their occupancy rate up to take the product to the market place as an investment. He added that while it is a great idea, it's probably not realistic at this point in time to put on the applicant the requirement to have a parking reciprocal easement with the neighboring hotels.

Chair Acevedo stated that he favored Alternative #2. Commissioner Lyle said he had a problem with alternative #1 in that he would only want to vote for that if it were for In-N-Out Burgers, because he views Alternative #1 as a blanket approval of any drive-thru. Commissioner Mueller agreed with Commissioner Lyle and explained that once you modify the PUD to add a fast food place, then you are going to get a fast food place regardless of who the fast food is, as it goes with the land. He added that you cannot condition zoning on the applicant. PM Rowe pointed out that with a zoning amendment all you are doing is changing what the allowable land uses are.

Commissioner Mueller stated that he does not think the Commission has worked the project enough to where they have sufficient details to resolve some of the circulation and visual aspect issues that reflect an appropriate gateway to forward to the City Council. He said that, at this point, they are just dumping the problem with Council. He suggested the Commission continue the request for two or four weeks; provide the applicant comments with issues they see on this project; try to work out some of the issues with the applicant; and then come up with a site plan where the Commission can get it potentially going forward with a better recommendation to the City Council.

Chair Acevedo stated that in his opinion the architectural issues are things the Commission

should recommend to the ARB for them to work through the details. Commissioner Mueller stated that in this particular case, we are talking about a gateway to the City and we are talking about putting a fast food restaurant there, and if you've listened to the criticism over the past ten years for what has gone on at Dunne Avenue, we are not there in what he would consider an acceptable product for the City. He continued by saying that he has not heard anyone in the community say anything bad about In-N-Out Burgers, and everybody would love to have one here. However, he added what we are trying to solve is a gateway visual issue and he thinks it's upon the Planning Commission to have that pretty well nailed down before altering a PUD that would be very difficult to change back.

Commissioner Escobar commented that he feels this was a cue for the applicant to realize that there is a window of opportunity that is starting to take place here. He advised the applicant that right now they have a split vote in terms of whether their application is acceptable to the Planning Commission, which doesn't mean that it necessarily will be acceptable to the Council. He further stated that he thinks Commissioner Mueller's advice is good, and he thinks that what the Commission is attempting to do is try to facilitate a project that they think has some positive potential, even given the constraints of it being a gateway location.

Commissioner Weston commented that he is the only one that does not have much of a conciliatory stance when it comes to this project. He stated that they are Planning Commissioners and he thinks it's their responsibility to decide where types of projects should go within locations of our City. He added that all the arguments made for In-N-Out Burgers were because of employment opportunities, the fact that the project has not gone forward in three years, and that they are good neighbors. Commissioner Weston noted that he can buy all that, but he just does not want to see In-N-Out Burgers located so close to the freeway. He further expressed that he does not want In-N-Out Burgers to represent Morgan Hill any more than he wants Chili's or anything like that to represent the City, but what he would like is some decent places that is at least landscaped better or a little bit more less pronounced close to our freeway.

Commissioner Escobar responded to Commissioner Weston's comments by stating that he thinks that one thing they may forget as Commissioners is that the way they zone property and the way they use property determines exactly how the community is perceived. He said that deciding land use issues do not have just simple impacts to land and to the facades and the image. Commissioner Escobar stated that it has significant impacts to the people who live, work and visit the City, so he understands his role. He added that he has grave concerns when those things are being suggested and he thinks it's the Commission's responsibility to monitor that process as well.

Commissioner Weston reiterated that when the developer of this project did come forth not that long ago, he was more than willing to say in front of everyone that he would not encourage a fast food restaurant. He pointed out that the developer did not say that he would not encourage a fast food restaurant unless things really get bad, so the majority of the people on the Commission voted to accept that. He expressed that now that we are three years later and four new Commissioners that he thinks it is an inappropriate action to take.

Chair Acevedo stated that under Alternative #1 that he did not think it practical to relocate the restaurant to the other parcel, and he did not hear the applicant say they thought that it is practical. He said that he could see a possible negotiation between staff and the applicant

for Alternative #2.

PM Rowe stated that Alternative #1, option 2, places conditions which minimizes the redesign of the precise development plan on the current site, and basically envisions the same flipping of the plan, but on the current site rather than moving it to the corner. He noted there has already been remarks by the applicant that this is objectionable because it puts the back of the building to the main thoroughfare, so I don't know where we would be successful in that. PM Rowe added that knowing where the votes are likely to be, maybe staff can come up with something different. He confirmed that they would be proceeding under a variation of Alternative #1, which is not yet approving the zoning amendment, but basically continuing the request with direction that the applicant and staff work to redesign the current precise development plan.

PM Rowe was provided the following remarks and key issues from the Commission for the applicant and staff to work with in the redesign of the precise plan: 1) Commissioner Engles commented that he would like to see the applicant come back with a plan for their fast food restaurant, as well as a specific sit-down restaurant. He added that a good example might be the Sinaloa Restaurant that just burned down, as it is going to be really hard to rebuild that restaurant on the same site where they were previously located. PM Rowe said staff could certainly approach the Sinoloa owners to see if they are interested in this being a possible site. Commissioner Mueller said that he thinks, from a process standpoint, they ought to be able to proceed with or without an actual sit-down restaurant; 2) The onsite traffic circulation; 3) Road "A"/Madrone Parkway intersection; 4) Better definition of the parking and maybe more specific information on the agreement they workout with the hotels; 5) Placement of the restaurant pads to help block off the fuel station part of the gas station; and 6) Commissioner Engles offered advisement to the applicant with respect to placement of the restaurant to the north-south, otherwise the outdoor seating could be adversely affected because that particular site is located in a wind tunnel.

Chair Acevedo commented that his preference is not to have landscaping between the Chevron gas station and the In-N-Out Burgers restaurant because they are going to exist together. He also said that he would rather not see landscaping there because people are going to trample right across it when running over to the restaurant real quick from the gas station.

Chair Acevedo reopened the public hearing.

Raymund Villanueva, Director of Development with In-N-Out Burgers, stated that he has been working with staff on this project for more than six months, negotiating back and forth on the site layout. He indicated it took management a long time to decide whether to go on the small piece or the large one. Mr. Villanueva stated that as a marketing issue, they cannot market the small piece for a sit-down restaurant, so if they were to redesign the plan, they can only do it with Alternative #2, as they are not receptive to relocating to the corner parcel. He was advised by Chair Acevedo that the Commission was not saying to relocate the project to the corner parcel, but to place it on the existing footprint, which is option 2 under Alternative #1.

There being no further comments, Chair Acevedo closed the public hearing.

COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO CONTINUE THE

ITEM TO THE SPECIAL COMMISSION MEETING ON JULY 30, 2002. THE MOTION PASSED BY A VOTE OF 5-0-1-1 AS FOLLOWS: ACEVEDO, ENGLES,

ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: WESTON; ABSENT: BENICH.

**2) DAA-01-04:
CENTRAL-
CENTRAL
PARK**

A request to amend the development agreement for three of fifteen building allocations for an eighteen-lot subdivision of 11.51 acres located on the north side of Central Avenue, south of the Morgan Hill Business Park. The amendment request would extend three building allocation from June 30, 2002, to August 30, 2002.

PM Rowe presented the staff report, advising that on June 26, 2002 the City Council granted the applicant an Exception to Loss of Building Allocation (ELBA) for 3 of the project's 18 building allotments for FY 2001-02, which allowed for a 60-day extension of time. The amendment of the approved development agreement would add the two-month extension date to Exhibit "B", Sections V and VI for recording the final map, pulling building permits, and commencing construction of the 3 building allotments. PM Rowe provided staff's recommendation for the Commission to adopt Resolution No. 02-56 and forward recommendation to the City Council for approval.

Chair Acevedo opened the public hearing.

Scott Schilling, 16060 Caputo Drive, Ste. 160, project applicant, briefly addressed the Commission, advising that he is ready to start this project. He stated that they are just about done with plan check on the improvement plans and the final map through Public Works. Mr. Schilling noted that they requested a 60-day extension just to make sure the final map gets recorded, and added that they should be getting started any day now.

Commissioner Lyle asked Mr. Schilling if the August 1st date would be sufficient time for the project to pull building permits. Mr. Schilling stated that changing that date to August 30th would also give him benefit of the full 60 days, as does the date approved for construction commencement.

There being no further comments, Chair Acevedo closed the public hearing.

COMMISSIONER MUELLER/ESCOBAR MOTIONED TO ADOPT RESOLUTION NO. 02-56, WITH A RECOMMENDATION TO CITY COUNCIL FOR APPROVAL, WITH A MODIFICATION TO EXHIBIT "A", SECTION V, TO CHANGE THE DATE FROM AUGUST 1, 2002 TO AUGUST 30, 2002 FOR PULLING BUILDING PERMITS FOR FY 2001-02. THE MOTION CARRIED ON A VOTE OF 6-0-1 AS FOLLOWS: AYES: ACEVEDO, ENGLES, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN; NONE; ABSENT: BENICH.

OTHER BUSINESS:

**5) SUMMER
MEETING
SCHEDULE**

It was the consensus of the Commission to cancel the July 23, 2002 regular meeting and schedule a special meeting on July 30, 2002 to hear the In-N-Out Burger item. They also agreed to cancel the August 27, 2002 meeting.

ANNOUNCEMENTS:

ADJOURNMENT: There being no further business, Chair Acevedo adjourned the meeting at 9:25 p.m.

MINUTES RECORDED AND PREPARED BY:

FRANCES O. SMITH, Administrative Secretary

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